

Conservation Compliance and the 2014 Farm Bill



Background

The Food Security Act was enacted on December 23, 1985. Title XII of this Act introduced 2 conservation provisions to address environmental concerns associated with soil erosion and wetland conversion:

- Highly Erodible Land (HEL) Conservation, or the “Sodbuster” provision
- Wetland Conservation, or “Swampbuster”

Background continued

Purpose. The purpose of the provisions are to remove certain incentives for persons to produce agricultural commodities on highly erodible land or converted wetland and to thereby—

- (1) Reduce soil loss due to wind and water erosion;
- (2) Protect the Nation's long-term capability to produce food and fiber;
- (3) Reduce sedimentation and improve water quality; and
- (4) Assist in preserving the values, acreage, and functions of the Nation's wetlands.

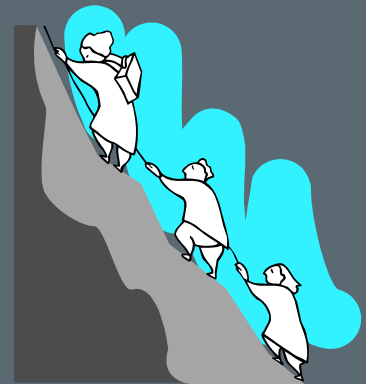
Agricultural Act of 2014

Re-linked federally subsidized Crop Insurance with Conservation Compliance.



Working Together

FSA, NRCS and RMA are working together to implement the provisions of the 2014 Farm Bill linking crop insurance premium subsidy to HELC/WC Compliance



Impact of 2014 Farm Bill

All persons seeking any premium subsidy, regardless of crops grown or insured, must certify compliance:

- Current FSA or NRCS program participants are subject to conservation compliance and not impacted by linking eligibility for premium subsidy to conservation compliance
- Persons new to compliance will be provided additional time to come into compliance
- Persons not in compliance can still buy crop insurance but will not be eligible for premium subsidy

New and Specific to Crop Insurance ONLY

- Administratively Final Determination (AFD)
- Crop Reinsurance year (July 1-June 30)
- February 7, 2014 (Agriculture Act of 2014, signed)
- First-time producer
- Crop insurance premium assistance (subsidy)
- Timely evaluation
- Equitable contribution

Certification of Compliance

- The AD-1026 will serve as the form for producers to certify compliance
- To be eligible for the crop insurance premium subsidy for the next reinsurance year (beginning July 1, 2015) producers must have an AD-1026 on file certifying their HELC/WC compliance by

June 1, 2015



Filing AD-1026

Who has to file?

- Anyone requesting benefits
- Affiliated persons with farming interests

When do they file?

- Before eligible for payment/benefit
- For premium subsidy, June 1 before the reinsurance year

Continuous certification



New Version of AD-1026 and AD-1026 Appendix

- Revised versions issued October 30, 2014
- Any previously filed version of AD-1026 remains valid **if** no changes to answers and no violation
- No requirement to provide producers new version of AD-1026 Appendix until new AD-1026 filed



AD-1026 and AD-1026 Appendix (10-30-14)

Reasons for Changes:

- Accommodate needs of broader range of producers who are required to provide certification of compliance with HELC/WC provisions
- Provide additional clarity

Note: No substantive change for FSA and NRCS customers.

Wetland Conservation Compliance

For Wetland Conservation Compliance, a producer is certifying they will **NOT**:

(1) Convert a wetland by draining, dredging, filling, leveling, removing woody vegetation, or any other activity that results in impairing or reducing the flow and circulation of water in a way that would allow the planting of an agricultural commodity.

(2) **NOT** to use proceeds from any FSA farm loan, insured or guaranteed, or any USDA cost-share program, in such a way that might result in negative impacts to a wetland, except for those projects evaluated and approved by NRCS.

Highly Erodible Land Conservation Compliance

For Highly Erodible Land Compliance a producer agrees that they will not plant or produce an agricultural commodity on highly erodible land unless it is farmed in accordance with a conservation plan approved by NRCS.

Reporting Activities on Form AD-1026

- Producers must notify FSA and update Form AD-1026 if conducting activities that may affect their certification.
- FSA will subsequently notify NRCS and NRCS will provide highly erodible land or wetland technical determinations or a conservation plan if needed.
 - FSA will delineate the specific field requiring a highly erodible land determination
 - FSA will mark the specific wetland areas for determination
- NRCS will use the appropriate methods to complete the determination referred by FSA.

Form AD-1026

- AD-1026 was modified to incorporate the new provisions relating to crop insurance. A checkbox was added for producers to indicate they are “new to compliance”.
- AD-1026 is a continuous certification and only needs to be updated or revised when the producer plans to take an action that will affect how the questions are answered.
- Producers new to compliance will need to have HEL determinations for their land if producing ag commodities for the year of certification.
- Wetland determinations may be needed if the producer indicates that modifying drainage systems is planned or if new drainage systems are planned to be installed.

Conservation Compliance

Unless an exemption applies, a person will be ineligible for premium subsidy beginning the reinsurance year after the reinsurance year the person is determined in violation and all administrative appeals are exhausted (administratively final determination).



Crop Insurance Participants

Timing of Ineligibility

- Ineligibility for premium subsidy will only apply to reinsurance years after the date of a final determination of a violation, including all administrative appeals
- Ineligibility for premium subsidy will not apply to the existing reinsurance year or any reinsurance year prior to the date of final determination



All of these clocks – when do they start ticking?



- After all of the administrative appeals have been exhausted – an “administratively final determination”
- This includes after NAD decisions, but does not include any judicial review

Additional Time for Producers new to Conservation Compliance

For eligibility for premium subsidy only:

- Producers who have never been subject to conservation compliance before have:
 - 2 reinsurance years to initiate a mitigation plan following a final Converted Wetland determination.
 - 5 reinsurance years to develop and implement a conservation plan for HEL

Other Timelines

For eligibility for premium subsidy only:

- For wetlands, persons have 1 reinsurance year to initiate a mitigation plan following a final Converted Wetland determination.
- For HEL, producers who have been subject to compliance in the past, stopped participating in programs subject to compliance, and currently are in violation, have 2 reinsurance years to comply with a conservation plan to maintain eligibility.

Equitable Contribution

- Applies to crop insurance participants and wetland compliance provisions only.
- For producers who are found in violation, this monetary contribution applies when a producer has not certified or has falsely certified their compliance.
- These producers will be asked to pay an equitable contribution to NRCS for each year the person was in violation of the WC provisions. The amount will not exceed the total of the crop insurance premium subsidies paid during the years of violation.

Agricultural Commodities

- Conservation compliance prohibits or restricts certain activities that involve an “agricultural commodity”



Agricultural Commodity

- An agricultural commodity is any crop planted and produced by annually tilling the soil, and sugarcane.
- Examples would include tomatoes, potatoes, onions, carrots, corn, soybeans, cotton, wheat, rice, barley, canola.
- A conservation compliance crop list has been provided at www.nrcs.usda.gov/compliance

Not Agricultural Commodities

- Citrus crops
- Orchard crops
- Sugar Bush (maple syrup)
- Vineyards
- Blueberries
- Rangeland
- Pastureland



Priority Technical Assistance

- The new Farm Bill requires NRCS to provide priority Technical Assistance to “first-time producers”
- Certifications will need to be evaluated “in a timely manner” or ineligibility for wetland conversions will not apply



Crop Insurance Producer Exemptions

- Eligibility for Federal crop insurance premium subsidy is not affected by wetland conversions that were completed, as determined by NRCS, before February 7, 2014.



Key trigger date

- Producers who convert a wetland after 2-7-14 could be found to be in violation and ineligible for crop insurance premium subsidy in the reinsurance year following the reinsurance year of the final determination, including all appeals.



Payment in Lieu for Wetland Mitigation

- This is a one time only option available for wetlands impacting less than 5 acres.
- A Crop-Insurance producer will be able to pay NRCS 150% of the cost of mitigating a wetland rather than creating a mitigation site.
- For crop insurance participation only.

Key Dates

- Spring of 2015 – updated compliance regulation (7CFR12) to be published
- June 1, 2015 – deadline for crop insurance producers to file Form AD-1026

Information and Assistance

- Additional information can be found online at www.fsa.usda.gov for FSA, www.nrcs.usda.gov for NRCS and www.rma.usda.gov for RMA.
- www.nrcs.usda.gov/compliance
- Shaun Vickers – shaun.vickers@ne.usda.gov



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Questions and Answers

